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FLASH REPORT

Country:	France
Title:	Court of Cassation 3 rd Civil Chamber, 4 July 2019 n° E 18-17119
Date:	20 August 2019
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<u>Context</u>	
Issue at stake:	Enforcement of the right to property and the applicability of the Article 8 proportionality assessment in case of illegal occupation of land by Roma
Grounds of discrimination:	Racial or ethnic origin
Field of application:	Housing
Source:	National court decision
Applicable law:	Articles 8 and Protocol 1 article 1 of the ECHR

Content

Case: In 2017, the owners of the land, a married couple and their children, initiated a recourse to obtain the expulsion of 45 Roma families occupying a piece of land since 2014.

Social measures to accompany the social integration of the families had been initiated by local authorities with the involvement of associations for 18 months. However, public authorities undertook no measures to find appropriate shelter for the families.

In the meantime, the city issued an order to the owner to take necessary measures to clean and reinstate proper sanitary conditions on the site, and the owners had business propositions to lease the land.

In the context of the city order and time elapsed since the beginning of occupation, the first instance judge admitted the recourse and ordered expulsion of the families. The Court of Appeal dismissed the appeal brought by the Roma families against the expulsion.

The Roma families and a number of NGOs (GISTI, Human Rights League and ERRC) have brought the case before the Court of cassation alleging inadequate assessment of the interference of the expulsion with the right to a home protected by Article 8 of the ECHR.

Decision of the court: In assessing the necessity of the interference with the right of illegal occupants to a home protected by Article 8 of the Convention in the face of the competing right to property also protected by Protocol n° 1 of the ECHR, the Court was called upon to strike a fair balance between conflicting Convention rights.

It decided that expulsion was the only measure that could allow the owners to recuperate the full measure of their right to property of a land illegally occupied since 2014. Therefore, the interference resulting from the respect of the right to domicile of occupying families

protected by Article 8 ECHR, could be allowed to become disproportionate in the face of the gravity of the violation to the right to property.

The court decided that considering the absolute character of the right to property, all occupation of the property of another without title constitutes a manifestly illicit violation that allows owner to obtain redress by way of expulsion by injunctive relief.

Key points of analysis: The Court refers to the decision of the ECtHR in the case [JFM c/ United Kingdom](#),¹ relating to the expulsion of a person after the end of a lease, to take a very strong stand on the absolute requirements of the right to property.

This decision appears to contradict the Court's previous position consecrating the imperious necessity to protect the home of underprivileged communities.²

In the two 2017 decisions, the Court assessed the right to domicile of private persons against the right to ownership of a public social housing corporation and the right of a family to occupy its own land. Thus, it was not confronted to the right to property of owners who were private individuals. Some commentators consider that the decision of 4 July 2019, as it discusses the rights of private owners, might be held not to apply in case of campsites occupying land owned by the State or Corporate owners.

However, in the 2019 decision, the Court of Cassation does not discuss the distinction between the different standards to be applied when the right to property of physical private persons is at issue as opposed to that of public or corporate owners. The Court makes a statement in principle affirming the priority to be given to the right to property. Some commentators, who take this statement literally, consider that this decision contradicts the jurisprudence of the ECtHR on the protection of the right to domicile of the Roma community, considering that it does not affirm the systematic superiority of the right to property, but requires judges to proceed to a control of proportionality on the impact of the interference of the expulsion on a case by case basis.

The NGOs are considering taking this case before the ECtHR.

Internet link source: https://www.gisti.org/IMG/pdf/jur_cas_2019-07-04.pdf.

¹ ECtHR, 29 November 2018 N°76202/16, Available at: [https://hudoc.echr.coe.int/eng#{\"itemid\":\"001-188124\"}\]\".](https://hudoc.echr.coe.int/eng#{\)

² Cass.3rd civ., 17 December 2015, n° 14-22095, regarding illegal occupation of its own land by Traveller families, and Cass.3rd civ., 21 December 2017, n° 16-25470, regarding illegal occupation by Syrian refugee families against a social housing corporation.